



Education and Local Government Interim Committee

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58th Montana Legislature

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JEFF MANGAN
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CONNIE ERICKSON, Research Analyst
EDDY MCCLURE, Staff Attorney
REBECCA SATTTLER, Secretary
PAMELA JOEHLER, Fiscal Analyst

Local Government Subcommittee MINUTES

January 9, 2004

Rm. 102, Capitol Building

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. JOAN ANDERSEN
SEN. WILLIAM GLASER
SEN. RICK LAIBLE
SEN. JEFF MANGAN, Chairman

STAFF PRESENT

LEANNE KURTZ, Research Analyst
EDDY MCCLURE, Staff Attorney
REBECCA SATTTLER, Secretary

AGENDA & VISITORS

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2

COMMITTEE ACTION

- ! Adopted Subcommittee minutes from October 30, 2003 meeting.
- ! Asked John Dilliard, DEQ, to submit his concerns in writing before the next meeting.
- ! Decided to invite Geoff Feiss to present his requests regarding governmental franchise at the next meeting.
- ! Asked interested entities to work together and come up with a sample bill draft incorporating their subdivision review suggestions before the next meeting.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:30 a.m. by CHAIRMAN MANGAN, and the secretary noted the roll (ATTACHMENT #3).

SEN. LAIBLE moved to adopt the minutes. REP. ANDERSEN seconded the motion, which carried unanimously by voice vote.

I. RESULTS OF THE PRE-APPLICATION SURVEY OF LOCAL PLANNERS

Leanne Kurtz went through *EXHIBIT 1* to explain the results of the pre-application survey. The survey consisted of 5 questions and 15 planners responded. The five questions posed were:

- ▼ 1) Does your city or county have a pre-application process for subdivision applications (major and minor)?
- ▼ 2) If you have a pre-application process, is a pre-application meeting required prior to subdivision application submittal?
- ▼ 3) How does the pre-application process work?
- ▼ 4) Do you think your pre-application process helps reduce the length of time it takes for an application to make its way through subdivision review?
- ▼ 5) Do you think that the pre-application process saved staff time?

Jeff Bollman, President, Montana Association of Planners (MAP), agreed with Ms. Kurtz's summary of the responses and added that local variations do exist to best suit the particular area.

Tammy McGill, Vice President, MAP, stated that they perform on-site pre-application meetings in Stillwater County. She distributed two flyers (*EXHIBIT 2*) that are given to applicants explaining the subdivision process and requirements, including required fees and a checklist.

SEN. LAIBLE inquired where the checkoff list comes in during the process and if every county provides the applicant with a checkoff list up-front. Jeff Bollman stated that it varies by community, but that Billings does offer a checklist. SEN. LAIBLE asked if the checkoff list begins at the pre-application meeting. Mr. Bollman replied that it does and is similar to the preliminary plat submittal. He added that it varies by situation, depending on the project and the issues involved. SEN. LAIBLE then asked if there is one checklist used for the pre-application and another used in the early submittal. Mr. Bollman stated that Yellowstone County uses the same checklist, which is given to the developer or applicant from the beginning.

II. PROBLEMS WITH THE SUBDIVISION REVIEW PROCESS AS IDENTIFIED AT OCTOBER MEETING

Leanne Kurtz went over *EXHIBIT 3* with the Subcommittee which is a summary of the problems identified at the October meeting. The problems fall into six categories: 1) time; 2) incomplete applications; 3) multiple meetings; 4) remainders; 5) definitions; and 6) summary review/expedited review.

III. SUGGESTED CHANGES TO SUBDIVISION AND PLATTING ACT

Leanne Kurtz distributed *EXHIBIT 4*, a table comparing what was contained in HB 370 with the suggestions submitted by the Montana Association of Realtors, Myra Shults, Ravalli County, Flathead County, Smart Growth Coalition, and G. Stewart Nash. Ms. Kurtz added that she summarized the information from the various submitters, so the suggestions are her characterization of what was proposed. She also attached a memo from Myra Shults who was not present at the meeting. Eddy McClure added that the information received from Ms. Shults is in addition to the information on the table.

Peggy Trenk, Montana Association of Realtors (MAR), explained that MAR has prepared a draft bill incorporating the changes in HB 370 from last session as well as MAR's requests. She stated that MAR requests that any new regulations include time frames, since the pre-application meeting can delay the process. Ms. Trenk stated that the highlights of MAR's recommendations for the process include: 1) dealing with the remainder doctrine; 2) for zoning to play a larger role; 3) maintain sanitation review requirement; 4) make denial criteria clear and consistent; and 5) MAR believes in local control, but the State has the responsibility to ensure broader policy questions.

Michael Kakuk, attorney for MAR, explained *EXHIBIT 5*, three charts illustrating the major subdivision review process in theory, in practice, and in a proposed form. He explained that MAR is trying to simplify the process, not necessarily quicken the process. He said that it might even take longer, but would be more predictable, resulting in fewer legal actions against the local governments.

Forrest Sanderson, Flathead County Planning, stated that they do not have a problem with the process, but with the quantity of requests they receive. He said his staff is extremely busy and they do not have time to address all of the requests as they come in. He added that there are fundamental problems with conflicting laws, and said that the responsibilities of local governments need to be specified. Mr. Sanderson stated that pre-application would save time and money for all involved in the process. He said that the growth policy in Section 606 is redundant and contradictory, as well as defeats the purpose of planning, so it should be eliminated. He proposed a three-tier system including minor subdivision review, 505 minor subdivision review (summary review), and the 609 major subdivision review. Mr. Sanderson stated that Montana's major subdivision review process doesn't need to be fixed, but the minor subdivision review process should be adjusted. He suggested a minor subdivision review system that would allow up to five tracts of land be subdivided before all of the regulations would apply, such as the parkland requirement. He stated that the current parkland requirement ties the hands of local parks and recreation departments. He echoed the need for stability in the process so an applicant can know what will happen at each step.

Tim Davis, Montana Smart Growth Coalition (SGC), walked through his part on the chart (Exhibit 4) to explain SGC's view. He urged the Subcommittee to not tie the hands of local governments to protect the public interest and switching the burden of proof from the subdivider to the local government when saying whether or not the development should be approved or denied. He stated that MAR's proposal does shift the burden of proof. He encouraged the Subcommittee to be wary of adopting the completeness test as proposed, to leave *ex parte* communication as it is under the law, and to create a predictable process incorporating zoning.

John Dilliard, Department of Environmental Quality (DEQ), Public Water and Subdivision Bureau, stated that he doesn't have any additional comments from DEQ at this time.

Ramona Maddox, City/County Planning Director, Billings and Yellowstone County, stated her support for Tim Davis' and MAR's remarks. She added that she would not like to see the definitions of subdivisions changed since the 160-acre specification works well.

Tammy McGill, Stillwater County Planning, said that the MAR pre-application conference is a good idea, as well as the changes addressing the remainder doctrine. Ms. McGill suggested that the Subcommittee look at splitting up the Subdivision and Platting Act, and continue to allow local control, but stated that she has a problem with the zoning incentive because she is afraid of unintended consequences.

Leanne Kurtz went over Exhibit 4 to explain the suggestions submitted by Ravalli County and Myra Shults, since they could not attend the meeting.

IV. COMMITTEE DISCUSSION

SEN. LAIBLE asked about the reasoning behind changing the regulation from 160 acres to 20 acres. Forrest Sanderson said that he fails to see the public interest in review of 160 acre plots. He added that the DEQ only looks at 20 acres and smaller. Either the local or state agency needs to be changed to ensure consistency. SEN. LAIBLE wondered about the claim of the burden of proof being shifted from the applicant to local governments. Tim Davis explained that attorneys he contacted said that under MAR's proposed changes, a local government has to prove the reason for denial of a permit, making it difficult to make a denial.

SEN. LAIBLE asked if the *ex parte* regulation meant that an applicant cannot talk to the county commissioners regarding the project, but the neighbors can. Mr. Davis stated that the commissioners can't talk about the proposal outside of the public process, but only after submission of the application. SEN. LAIBLE wondered if the problem would be solved if *ex parte* were allowed with restrictions. Mr. Davis said that he preferred that everything be out in the open after the applications are turned in.

SEN. LAIBLE wondered if zoning rewards or punishes the property owners and if development standards should be used in place of zoning. Michael Kakuk stated that development standards are the same as zoning, which is the same as land use regulation. He said that it should be done at the community level instead of the state. He added that zoning is the way to go for predictability and that it is a problem of the lack of adequate planning and zoning instead of subdivision. SEN. LAIBLE wondered about the burden of proof issue. Mr. Kakuk said that the governing body already has the burden of proof, MAR's proposal is simply raising the bar. He stated that staff communications, and not neighbors, is the real problem that the *ex parte* suggestion aims to control. REP. ANDERSEN inquired if it will be more difficult to make changes in zoning if it is put into statute. Mr. Kakuk explained that zoning is already authorized with due process intact. He added that zoning changes are always problematic and that a zone has to be uniform, or it is considered unconstitutional. Zoning cannot be required of local governments, but incentives can be provided to encourage local governments to zone.

SEN. LAIBLE asked about the parkland issue being required of major subdivisions and not

minor subdivisions and how it related to impact fees. Mr. Kakuk said that he was speaking on behalf of himself, but that any kind of parkland requirement is an impact fee. He agreed with Forrest Sanderson's suggestion regarding the five minor divisions before the parkland requirement would take effect, or perhaps regional parks being required in the place of local parks. SEN. LAIBLE inquired about the fire district requirements. Mr. Kakuk again stated that he was speaking for himself, but that the local government already has the authority to protect public safety and name requirements. He said that it is lawful for a fire department to receive money in the place of a developer installing sprinklers, for example.

CHAIRMAN MANGAN asked DEQ to comment on the suggestion that the agency review an application before the local review process begins. John Dilliard answered that the issue is if any changes are made during the Subdivision and Platting review, DEQ has to perform its review again which is a complicating factor for developers as well. CHAIRMAN MANGAN asked Mr. Dilliard to submit those concerns in writing for the next meeting. CHAIRMAN MANGAN wondered about the concerns at the local level. Jeff Bollman answered that he cannot provide specifics at this time, but is willing to work with MAR, SGC, and other interested parties to identify and resolve those concerns. CHAIRMAN MANGAN asked if there is a problem regarding the *ex parte* issue. Mr. Bollman replied that he hasn't talked to enough members of MAP to represent their comments, but as a planner, he tries to retain a neutral position, and is not seen as the opposition. CHAIRMAN MANGAN asked if the planners see themselves as an independent agency with no restrictions or limits. Mr. Bollman responded that they do not; their role is to provide information to the Board of Commissioners in a neutral fashion, and that all staff reports are public record. Mr. Kakuk agreed that he made an over-generalization by stating that the staff is the opposition, and he was speaking of one particular client. He added that it is the perception among some developers, however.

SEN. GLASER added that the sanitation laws cannot be divorced from the issue. He stated that the anger is coming from the people not currently part of the process. CHAIRMAN MANGAN agreed that sanitation is still an issue to be addressed, and will be part of the discussions in future Committee meetings.

Leanne Kurtz summarized the common ground issues she has heard from the meeting include:

- consolidation of review of minor subdivisions in the law
- completeness check for preliminary review of application
- consolidating expedited review in one place in the law
- clarification of summary review
- addressing the pre-application process in law
- technical definitions

She said that the major issues still not held on common ground include:

- role of zoning, incentives
- denial criteria
- evasion criteria
- growth policies
- *ex parte* issue
- timing
- remainders
- fire regulations
- sanitation

Ms. Kurtz said the groups plan to get together to work out these issues and then come before the Subcommittee again at the next meeting with more information.

V. PUBLIC COMMENT

Jim Kembel, Engineer, said that there is a problem with the fire requirements and that the requirements are tough to meet. He added that there is a conflict with the building codes and the firemen. Mr. Kembel gave an example of a subdivision requirement in conflict with state law. He explained that it is a complex process for the state to adopt the fire codes and that the local governments should adopt those as well.

Jim Taylor, Consulting Engineer, stated that he has been involved with over 100 subdivisions in his career of 30 years and that the same arguments and concerns have continued that whole time. He explained that there is a problem with changing the regulations without any technical input from engineers when new regulations are written. Mr. Taylor complained that every time new regulations are written, the new document is twice as thick and twice as complicated, without solving the problems. He suggested that the issue be addressed from a professional standpoint and establish proven guidelines from the ground up, not the top down. He stated that boundaries need to be established for rule-writing as well to determine if they are needed, what the repercussions might be, and if the authority exists to make the change.

VI. STAFF UPDATES, INSTRUCTIONS TO STAFF

Eddye McClure, staff attorney, said that she has met with the Attorney General's Office and the Lewis and Clark County Planning Committee to follow the fire regulation issue. February 3 is the next County planning meeting, which will be the next review. The second issue she has been following is the lawsuit with Ravalli County regarding multiple meetings and public comment. She explained that it is an ongoing issue, involves HB 94, passed in 2003, and that doesn't involve only Ravalli County, but the City of Missoula is also in litigation and the City of Helena has issues to be resolved as well. The third topic she has been researching has been the governmental franchise/privatization issue. Ms. McClure explained that the issue is very broad and could get complicated, and wondered if the Subcommittee is interested in delving into the subject.

CHAIRMAN MANGAN said that the entities that were at odds during the session on impact fees need to get together and work out the concerns. He added that the scope might be a little much for the Subcommittee's limited resources if they try to cover governmental franchise laws as well. SEN. LAIBLE agreed with the Chairman, doubting that the Subcommittee will have time to cover either topic. CHAIRMAN MANGAN wondered what the options might be regarding the governmental franchise issue. Eddye McClure responded that the two groups that appear the most interested in the issue are the telecommunication industry and the Taxpayers' Association. She said the prevailing interest seems to be in taking the government out of competition in a more global privatization approach. CHAIRMAN MANGAN stated that he would like to hear from those entities regarding their requests for the Subcommittee. Ms. McClure agreed to invite Geoff Feiss to attend the next meeting and present those requests.

SEN. LAIBLE expressed his appreciation to staff in doing an excellent job preparing and presenting materials for the meeting. He also said that Chairman Mangan did an excellent job

chairing the Subcommittee. He stated that he would like to see the interested groups work together and come up with a sample bill draft incorporating their common interests and delineating their areas of disagreement. He added that some issues to be addressed include time frames for the pre-application process, remainder statutes, and the family transfer issue. Leanne Kurtz stated that the Subcommittee will have a draft bill and opportunity for discussion of the areas of contention that remain at the April meeting.

ADJOURN

The meeting adjourned at 12:20 p.m. The next meeting date is scheduled for April 2, 2004.

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